

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NANCY HYDER,

Plaintiff,

v.

KEMPER NATIONAL SERVICES, INC.;
LUMBERMAN'S MUTUAL INSURANCE CO.;
BROADSPIRE SERVICES, INC.; VODAFONE
AMERICAS, INC.; VODAFONE AMERICAS,
INC., SHORT TERM DISABILITY PLAN;
VODAFONE AMERICAS, INC., LONG TERM
DISABILITY PLAN; VODAFONE EMPLOYEE
HEALTH PLAN; VODAFONE EMPLOYEE DENTAL
PLAN; VERIZON WIRELESS, INC.; and
DOES 1 TO 50, inclusive,

Defendants.

No. C 05-1782 CW

ORDER ADDRESSING
BACK BENEFITS AND
PRE-JUDGMENT
INTEREST ON
PLAINTIFF'S ERISA
CLAIMS

On June 30, 2006, the Court issued an order granting Plaintiff's motion under Federal Rule of Civil Procedure 52 for adjudication of her Employee Retirement Income Security Act (ERISA) claims against Defendants Kemper National Services, Inc. (Kemper), Lumberman's Mutual Insurance Co. (Lumberman's), Broadspire Services, Inc. (Broadspire), Vodafone Americas, Inc., Long Term Disability Plan (the LTD Plan), and Vodafone Americas, Inc., Short Term Disability Plan (the STD Plan). Judgment has not entered

1 because Plaintiff's non-ERISA claims have not yet been adjudicated.
2 Nevertheless, in anticipation of entry of judgment on these claims,
3 the Court ordered Plaintiff to submit a proposed calculation of
4 back benefits in an amount certain and a formula for calculating
5 pre-and post-judgment interest.

6 Plaintiff now claims that as of the June 30, 2006 Order, she
7 was entitled to \$29,689.49 in net short-term disability back
8 benefits and \$332,457.93 in net long-term disability back benefits.
9 Plaintiff also calculates that she is entitled to \$5,597.84 per
10 month in on-going long-term disability benefits. Plaintiff asks
11 the Court to award pre-judgment interest at the rate of ten percent
12 per annum, pursuant to California Insurance Code § 10111.2,
13 compounded annually, or alternatively pre-judgment interest at the
14 rate prescribed by 28 U.S.C. § 1961(a), compounded monthly.
15 Plaintiff also requests post-judgment interest pursuant to 28
16 U.S.C. § 1961(a).

17 Without waiving their rights to contest the Court's decision
18 against them, Defendants agree with Plaintiff's calculation of back
19 benefits. The calculation of her ongoing benefits and of post-
20 judgment interest is not disputed. However, Defendants dispute the
21 appropriate pre-judgment interest rate, arguing that the § 1961(a)
22 rate applies.

23 The Ninth Circuit has held that a district court properly
24 awarded a plaintiff, who prevailed on her ERISA claim for
25 disability insurance benefits, pre-judgment interest at the
26 § 1961(a) federal rate, rather than California's ten per cent
27 statutory rate. Grosz-Salomon v. Paul Revere Life Ins. Co., 237

1 F.3d 1154, 1163-64 (9th Cir. 2001). The court explained that the
2 § 1961(a) rate was appropriate "unless the trial judge finds, on
3 substantial evidence, that the equities of that particular case
4 require a different rate." Id. at 1164 (quoting Nelson v. EG&G
5 Energy Measurements Group, Inc., 37 F.3d 1384, 1391 (9th Cir.
6 1994)). In light of this clear holding, Plaintiff's more general
7 analysis of the issue of ERISA preemption is inapposite.

8 Plaintiff has not shown substantial evidence that the equities
9 in this particular case demand the higher rate, and the Court does
10 not so find. The Court will award pre-judgment interest at the
11 rate described in Title 28 U.S.C. § 1961(a). However, the Court
12 finds that, in order to make Plaintiff whole, the equities demand
13 that the pre-judgment interest be compounded monthly.

14 IT IS SO ORDERED.

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16 Dated: 10/11/06



17 CLAUDIA WILKEN
18 United States District Judge
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